

April 23, 2008

Mr. Stuart Drown, Executive Officer
Little Hoover Commission
925 L. Street, Suite 805
Sacramento, CA 95814

Dear Mr. Drown:

Re: Hearing on the State Water
Resources Control Board

The Riverside County Flood Control and Water Conservation District (District) serves as the Principal Permittee on three Municipal Separate Storm Sewer System (MS4) permits issued by three Regional Water Quality Control Boards. The District appreciates the opportunity to provide input on the governance structure surrounding water quality regulation in California. Our experience in administering the three MS4 permit compliance programs for three areas of the County and working with three Regional Boards with different perspectives and approaches to water quality regulation provides the District with a unique perspective on the administration of water quality regulation in California.

Two of the MS4 permits issued to Riverside County cover semi-arid areas and are issued by the San Diego and Santa Ana Regional Water Quality Control Boards. These Regional Boards also issue MS4 permits to San Diego and Orange Counties, which discharge to coastal receiving waters. The Colorado Regional Water Quality Control Board has issued an MS4 permit for the Coachella Valley area, which is in the desert area of the County.

The District Supports the Existing Regulatory Framework

The District supports the existing State Board/Regional Water Quality Control Board system established by the legislature in adopting the Porter-Cologne Act in 1969. This Act assigns responsibility for establishing State-wide policy for water quality management to the State Water Resources Control Board (State Board) and the responsibility for administering State policy to the Regional Water Quality Control Boards (Regional Boards).

The District Supports the Comments Submitted by Carole Beswick and Chris Crompton

The District has reviewed the written comments submitted by Carole Beswick, Chairman of the Santa Ana Regional Board and supports her positions regarding the importance of the task force approach, holding agencies accountable only for those programs for which adequate funding is provided, and mandatory implementation of State Board policy. We have also reviewed and support the comments submitted by Chris Crompton of Orange County.

Mr. Stuart Drown, Executive Officer
Little Hoover Commission
Re: Hearing on the State Water
Resources Control Board

-2-

April 23, 2008

Five Necessary Policy Changes

Based on our experience working with several Regional Boards on regulatory and compliance matters, the District recommends the following actions to improve the efficiency of Regional Board regulatory programs and ensure that public resources are appropriately directed toward the solution of actual water quality problems:

- 1) The Legislature and/or State Board need to establish policy and provide the funding necessary to support legitimate triennial review of Regional Water Quality Control Plan Water Quality Standards.

As the foundation of the State's water quality programs, it is critical that the Water Quality Control Plans properly reflect achievable outcomes, current science and state policy. Current Water Quality Standards were established in the early 1970's with limited and, often, insufficient data. The majority of these standards have not been adequately reviewed since that time. In too many instances, this has resulted in misdirection of regulatory programs and expenditure of public resources without meaningful improvement in water quality. Funding and policy need to be established to ensure that Water Quality Control Plans are regularly reviewed and can be expeditiously updated consistent with state and federal requirements.

- 2) The Regional Boards need to be directed to support use of watershed planning approaches such as Special Area Management Plans to manage water quality.

The existing project-by-project permitting schemes implemented by the Regional Boards provided limited environmental protection and impair the delivery of housing and economic development for Californians. To effectively manage development in a manner protective of the environment the State must support and participate in watershed-based efforts such as Special Area Management Plans to plan infrastructure and account for environmental impacts.

- 3) The State needs to fund, or limit, MS4 Permittee permit compliance obligations that exceed federal NPDES regulatory requirements, including MS4 Permit obligations that shift the responsibility of State General NPDES Permit programs to local governments.

Through the MS4 permits, Regional Boards have established compliance requirements that assign primary responsibilities for water quality studies, discharge control, and water quality management necessary to regulate areas not draining to the MS4 systems and/or necessary to regulate land use activities for which the Permittees have no authority (tribal, state and federal lands) to cities and counties. The transfer of primary responsibility for conducting inspections of construction activities and industrial facilities for compliance with the NPDES General Construction Activities and General Industrial Activities permits to the city and county MS4 permittees is another example of this transfer of responsibility. Implementation of these broader program obligations and NPDES General Permit responsibilities by the cities and counties is not optional and funding received from the state's permit fees is not provided to the cities and counties for implementation.

Mr. Stuart Drown, Executive Officer
Little Hoover Commission
Re: Hearing on the State Water
Resources Control Board

-3-

April 23, 2008

This abdication of responsibility for administration of the NPDES General Permits is improper and inconsistent with regulatory protocol. Moreover, this abdication is contrary to the Legislature's expressed intent that the Regional Boards - not the cities or counties - assume principal responsibility for managing the State's water quality control programs. Further, consistent with Carole Beswick's written testimony that ". . . it is absolutely inappropriate to hold an agency accountable for some responsibility for which it is not funded," we too believe that the NPDES Permittees should be funded for obligations placed upon them by the State. Under Porter-Cologne, the State has specific authorities, expertise, and greater enforcement authority to address these sources of pollutants.

- 4) The State Board needs to establish policy supporting and promoting the use of stakeholder Task Force based approaches to resolving Basin Planning and TMDL development problems.

Task Force based approaches such as those implemented by the Santa Ana and Colorado Regional Boards facilitate consideration of the complex policy issues associated with Water Quality Standards and TMDL problems. Involving diverse stakeholders in the initial and ongoing development of Water Quality Standards and TMDLs builds a fuller understanding of issues, potential solutions and likely outcomes of alternative policies. Further, when properly implemented, task forces inherently build support for outcomes and discourage costly litigation. Task Force based approaches require well trained facilitators and an open mind to alternative solutions by Regional Board staff.

- 5) The State Board needs to establish a common framework for NPDES MS4 Permit development that establishes the basic format and guidelines for MS4 permit writers. At the same time, it is imperative that permit writers recognize and accommodate the significant differences between permit areas' climate, population, resources and priority water quality problems.

It is widely recognized that, in the absence of clear statewide policy and guidance, the current MS4 permitting process ranges from faulty to dysfunctional. Under current practice, Regional Board permit writers will often selectively cut and paste permit requirements adopted for other MS4 programs throughout the state. It has been Riverside County's experience that certain permit requirements have been imposed even where there is no concomitant water quality problem to warrant inclusion of the additional requirements.

This ongoing proliferation of permit requirements has resulted in the imposition of *de facto* statewide mandates that have significant statewide policy implications and local budgetary consequences that should be subject to State Board or legislative determination and which should be subject to a statewide hearing process. Recently, this informal collaboration process has been raised to a higher level by the recent meeting of USEPA with Regional Board management to promote MS4 permit consistency. Given this situation, statewide MS4 permitting guidelines are clearly needed to ensure that establishment of State Policy is made by the State Board – not an *ad hoc* group of Regional Board/USEPA staff

Mr. Stuart Drown, Executive Officer
Little Hoover Commission
Re: Hearing on the State Water
Resources Control Board

-4-

April 23, 2008

The foregoing notwithstanding, establishment of a “one size fits all” Statewide MS4 Permit would be highly inappropriate. A framework or guidelines for Permitting is more appropriate due to significant differences in population, climatic and receiving water conditions that exist in California’s various MS4 Permit regions. Local Regional Boards must be allowed the discretion to tailor their MS4 permits in accordance with local conditions and the priority water quality problems within their region.

Closing

The Riverside County MS4 Permittees remain committed to management of urban runoff to protect receiving water quality in a manner that balances that objective with the universe of complementary and competing needs and expectations of the citizens of California living within Riverside County.

If you have any questions regarding these comments, please contact me at 951.955.8411 or email me at mwills@rcflood.org. You can also contact Jason Uhley of the Regulatory Division at 951.955.1273 or email him at juhley@rcflood.org.

Very truly yours,

MARK H. WILLS
Chief of Regulatory Division

c: Riverside County MS4 Permittees
Attn: Robert Collacott, URS Corporation

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